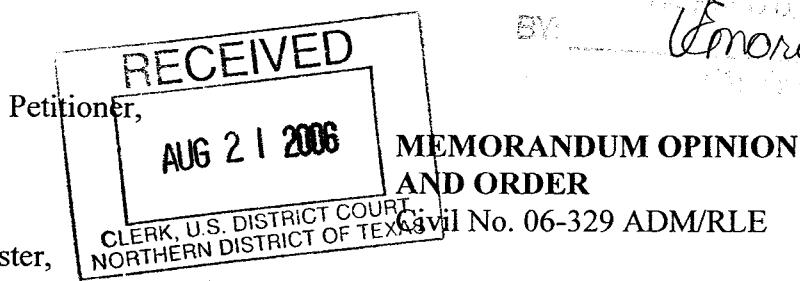


UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Ronald Lee Lewis,

v.

Warden, FMC-Rochester,



Respondent.

3 - 06 CV 1511M

Ronald Lee Lewis, *pro se*.

Friedrich A. P. Siekert, Esq., Assistant United States Attorney, Minneapolis, MN, on behalf of Respondent.

I. INTRODUCTION

This matter is before the undersigned United States District Judge on Respondent Warden, FMC-Rochester's ("Respondent") Objections [Docket No. 31] to the April 6, 2006 Report and Recommendation ("R&R") [Docket No. 30] of Magistrate Judge Raymond L. Erickson, which recommends a stay of Petitioner Ronald Lee Lewis' ("Petitioner") Petition for Writ of Habeas Corpus [Docket No. 1]. Because this Court does not have jurisdiction to hear the Petition, the Objections are granted in part, and the case is transferred to the Northern District of Texas.

II. DISCUSSION

Petitioner, an inmate at FMC-Rochester, is terminally ill and may not survive to the end of his sentence, which expires in August 2007. He is currently in the prison hospice program, as he is not expected to live another year. Petition at 3. He has filed a Petition seeking habeas relief in the form of compassionate release under 18 U.S.C. § 2582(c)(1)(A). Respondent

initially opposed the Petition on the grounds that jurisdiction is lacking because Petitioner failed to exhaust his administrative remedies. The R&R, however, correctly held that exhaustion requirements for habeas petitions are not mandated by statute; rather, they are a judicially created doctrine. Gonzalez v. O'Connell, 355 F.3d 1010, 1015 (7th Cir. 2004). Thus, exhaustion of administrative remedies is not required for jurisdiction under § 2241. Id.; Brown v. Rison, 895 F.2d 533, 535 (9th Cir. 1990). Based on this, the R&R recommends staying the Petition, finding that although Petitioner's administrative request may be successful and that any dismissal would be without prejudice, these factors were outweighed by the potential prejudice given Petitioner's precarious medical condition if he were required to re-file his Petition.

Respondent's instant Objections argue that this Court lacks jurisdiction to hear the Petition because it is not the sentencing court. Under 18 U.S.C. § 3582(c)(1)(A); 28 C.F.R. §§ 571.60, 571.62, only the sentencing court may make an inmate immediately eligible for parole on a compassionate release motion. Because Petitioner was sentenced by the Northern District of Texas, this Court can not hear his Petition. However, for the reasons set forth in the R&R, the Court does not wish to prejudice Petitioner by the delay that would be caused by dismissal of his case. Therefore, the case is transferred to the Northern District of Texas pursuant to 28 U.S.C. § 1406(a), which provides district courts with the power to transfer cases in the interests of justice. This transfer will enable Petitioner to have his Petition considered quickly should his administrative remedies fail. The Northern District of Texas may decide to stay his case in the interim.

III. CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS**
HEREBY ORDERED that:

1. Respondent Warden, FMC-Rochester's Objections [Docket No. 31] are **GRANTED** in part and **DENIED** in part; and
2. The Clerk of Court is ordered to **TRANSFER** the instant action to the Northern District of Texas.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: April 27, 2006.

**U.S. District Court
District of Minnesota (DMN)
CIVIL DOCKET FOR CASE #: 0:06-cv-00329-ADM-RLE**

Lewis v. Warden FMC Rochester

Assigned to: Judge Ann D Montgomery

Referred to: Chief Mag. Judge Raymond L Erickson

Cause: 28:2241 Petition for Writ of Habeas Corpus (federal)

Date Filed: 01/24/2006

Jury Demand: None

Nature of Suit: 530 Habeas Corpus
(General)

Jurisdiction: U.S. Government Defendant

Petitioner

Ronald Lee Lewis

represented by **Ronald Lee Lewis**

#64658-079

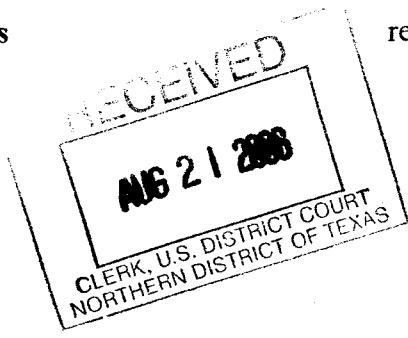
FMC Rochester

PMB 4000

Rochester, MN 55903-4000

US

PRO SE



V.

Respondent

Warden FMC Rochester

represented by **Friedrich A P Siekert**

US Attorney - Mpls

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LEAD ATTORNEY

ATTORNEY TO BE NOTICED

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TERMINATED: 01/31/2006

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

A true printed copy in 5 sheet(s)
of the electronic record filed on _____
in the United States District Court
for the District of Minnesota.

CERTIFIED, 8/15, 2006.

RICHARD J. SLETTEN

BY:

J. Morales

Deputy Clerk

Date Filed	#	Docket Text
01/24/2006	<u>•1</u>	PETITION for Writ of Habeas Corpus Filing fee paid \$5 receipt # 148192 assigned to Judge Richard H. Kyle per Prisoner List referred to Magistrate Judge Raymond L. Erickson, filed by Ronald Lee Lewis. cc: Jim Lackner 16pgs(VEM) (Entered: 01/24/2006)
01/24/2006	<u>•2</u>	MOTION to Expedite by Ronald Lee Lewis. cc: RLE 2pgs (VEM) (Entered: 01/24/2006)
01/24/2006	<u>•3</u>	MOTION to Appoint Counsel by Ronald Lee Lewis. cc: RLE 2pgs (VEM) (Entered: 01/24/2006)
01/26/2006	<u>•4</u>	ORDER of Disqualification and for Reassignment. (Written Opinion). Signed by Judge Richard H. Kyle on 01/25/06. (rhks) (Entered: 01/26/2006)
01/26/2006	<u>•</u>	NOTICE to Attorney that this case is reassigned to Judge Ann D. Montgomery per Disqualification and Order for Reassignment (RHK;1/25/06). Please note that the new case number is 0:06-cv-00329-ADM-RLE. (JGG) (Entered: 01/26/2006)
01/30/2006	<u>•5</u>	ORDER The Respondent is directed to make a Return in writing within 20 days from the date of this Order, certifying the true cause of the Petitioner's detention and the proper length of his confinement in prison, and showing cause why the Writ should not be granted. Signed by Chief Magistrate Judge Raymond L Erickson on 1/30/06. (JLB) (Entered: 01/30/2006)
01/31/2006	<u>•6</u>	NOTICE OF ATTORNEY APPEARANCE/SUBSTITUTION for Warden FMC Rochester (Attachments: # <u>1</u> Certificate of Service)(Siekert, Friedrich) (Entered: 01/31/2006)
02/15/2006	<u>•7</u>	MOTION for Extension of Time to File by Warden FMC Rochester. (Siekert, Friedrich) (Entered: 02/15/2006)
02/15/2006	<u>•8</u>	MEMORANDUM in Support re <u>7</u> MOTION for Extension of Time to File filed by Warden FMC Rochester. (Attachments: # <u>1</u> LR7.1 Word Count Compliance Certificate)(Siekert, Friedrich) (Entered: 02/15/2006)
02/15/2006	<u>•9</u>	Declaration of Friedrich A. P. Siekert in Support of <u>7</u> MOTION for Extension of Time to File filed by Warden FMC Rochester. (Siekert, Friedrich) (Entered: 02/15/2006)
02/15/2006	<u>•10</u>	CERTIFICATE OF SERVICE by Warden FMC Rochester re <u>7</u> MOTION for Extension of Time to File, <u>8</u> Memorandum in Support of Motion, <u>9</u> Declaration in Support (Siekert, Friedrich) (Entered: 02/15/2006)
02/16/2006	<u>•11</u>	ORDER deferring [2] Motion to Expedite, denying but without prejudice [3] Motion to Appoint Counsel, granting in part <u>7</u> Motion for Extension of Time to File and the Respondent shall file its Return by no later than March 8, 2006. Signed by Chief Magistrate Judge Raymond L Erickson on 2/16/06. (JLB) (Entered: 02/16/2006)

03/03/2006	• <u>12</u>	LETTER FROM CHIEF MAGISTRATE JUDGE Raymond L. Erickson to Ronald Lee Lewis re: return of ex parte communication. Signed by Chief Magistrate Judge Raymond L. Erickson on 3/3/06. (JLB) (Entered: 03/03/2006)
03/06/2006	• <u>13</u>	LETTER FROM CHIEF MAGISTRATE JUDGE Raymond L. Erickson to Ronald Lee Lewis re: return of ex parte communications. Signed by Chief Magistrate Judge Raymond L. Erickson on 3/6/06. (JLB) (Entered: 03/06/2006)
03/08/2006	• <u>14</u>	RESPONSE to Petition for Writ of Habeas Corpus by Warden FMC Rochester.(Siekert, Friedrich) (Entered: 03/08/2006)
03/08/2006	• <u>15</u>	Declaration of Friedrich A. P. Siekert in Support of <u>14</u> Response to Habeas Petition filed by Warden FMC Rochester. (Attachments: # <u>1</u> Exhibit)(Siekert, Friedrich) (Entered: 03/08/2006)
03/08/2006	• <u>16</u>	Declaration of David Edwardy, D.O. in Support of <u>14</u> Response to Habeas Petition filed by Warden FMC Rochester. (Siekert, Friedrich) (Entered: 03/08/2006)
03/08/2006	• <u>17</u>	Declaration of Ann C. Kinyon in Support of <u>14</u> Response to Habeas Petition filed by Warden FMC Rochester. (Attachments: # <u>1</u> Attachment A# <u>2</u> Attachment B# <u>3</u> Attachment C)(Siekert, Friedrich) (Entered: 03/08/2006)
03/08/2006	• <u>18</u>	CERTIFICATE OF SERVICE by Warden FMC Rochester re <u>17</u> Declaration in Support, <u>16</u> Declaration in Support, <u>15</u> Declaration in Support, <u>14</u> Response to Habeas Petition (Siekert, Friedrich) (Entered: 03/08/2006)
03/09/2006	• <u>19</u>	LETTER TO CLERK'S OFFICE from Ron L. Lewis with one exhibit "Medical Progress Note". No copies 6pgs (VEM) (Entered: 03/09/2006)
03/10/2006	• <u>20</u>	LETTER TO CLERK'S OFFICE from Ron L. Lewis requesting copy of docket sheet and order of disqualification. Mailed both requests. No copies 1pg (VEM) (Entered: 03/14/2006)
03/10/2006	• <u>21</u>	LETTER TO CLERK'S OFFICE from Ron L. Lewis regarding exhibits to support his habeas corpus, no exhibits received. No copies 3pgs (VEM) (Entered: 03/14/2006)
03/15/2006	• <u>22</u>	RESPONSE by Ronald Lee Lewis re <u>14</u> Response to Habeas Petition in the form of letter. No copies 18pgs (VEM) (Entered: 03/15/2006)
03/15/2006	• <u>23</u>	LETTER in response to Order [Docket No. 11], from Ronald Lee Lewis. (JMH) (Entered: 03/15/2006)
03/15/2006	• <u>24</u>	LETTER FROM CHIEF MAGISTRATE JUDGE Raymond L. Erickson to Ronald Lee Lewis re: return of ex parte communication. (JLB) (Entered: 03/15/2006)
03/15/2006	• <u>25</u>	ORDER 1. That the Petitioner's informal Motion to Appoint Counsel and to reconsider his Motion to Expedite [21] be denied, but without prejudice. 2. That the Petitioner shall have until April 15, 2006, in which to respond,

		should he so choose, to the Respondent's submission to the Court requesting that the Petition for a Writ of Habeas Corpus be denied and the case dismissed. Signed by Chief Magistrate Judge Raymond L Erickson on 3/15/06. (JMH) (Entered: 03/15/2006)
03/16/2006	●26	ORDER That, by no later than April 5, 2006, the Respondent shall respond to the Petitioner submission to the Court requesting that the Petition for a Writ of Habeas Corpus be stayed pending the exhaustion of administrative remedies. Signed by Chief Magistrate Judge Raymond L Erickson on 3/16/06. (JMH) (Entered: 03/16/2006)
03/28/2006	●27	MEMORANDUM by Warden FMC Rochester re [22] Response filed by Warden FMC Rochester. (Attachments: # <u>1</u> LR7.1 Word Count Compliance Certificate # <u>2</u> Certificate of Service)(Siekert, Friedrich) (Entered: 03/28/2006)
04/03/2006	●28	JUDICIAL NOTICE AND SUBMISSION OF ADDITIONAL EXHIBITS by Ronald Lee Lewis. No copies 20pgs (VEM) (Entered: 04/04/2006)
04/05/2006	●29	LETTER TO MAGISTRATE JUDGE by Ronald Lee Lewis with attached memorandum from Marty C. Anderson Warden. No copies 3pgs (VEM) (Entered: 04/05/2006)
04/06/2006	●30	REPORT AND RECOMMENDATION 1. That the Petitioner's informal Motion to Stay [22] be GRANTED. 2. That this case be placed into an Administrative Stay until further Order of the Court. Objections to R&R due by 4/21/2006. Signed by Chief Magistrate Judge Raymond L Erickson on 4/6/06. (JLB) (Entered: 04/06/2006)
04/21/2006	●31	OBJECTION to <u>30</u> Report and Recommendations. (Attachments: # <u>1</u> Certificate of Service)(Siekert, Friedrich) (Entered: 04/21/2006)
04/27/2006	●32	MEMORANDUM OPINION AND ORDER Respondent's Objections <u>31</u> are granted in part and denied in part; the Clerk of Court is ordered to TRANSFER the instant action to the Northern District of Texas (Written Opinion). Signed by Judge Ann D Montgomery on 04/27/2006. (TLU) (Entered: 04/27/2006)
05/04/2006	●33	LETTER TO CLERK'S OFFICE from Ron L. Lewis updating the court with new facts. No copy/6pgs (VEM) (Entered: 05/05/2006)
05/08/2006	●34	LETTER TO CLERK'S OFFICE from Ron L. Lewis regarding late in filing his Motion for reconsideration, he was sick. No copy/2pgs (VEM) (Entered: 05/08/2006)
05/08/2006	●35	MOTION for Reconsideration re <u>32</u> Order on Report and Recommendation, by Ronald Lee Lewis. No copy/2pgs (VEM) (Entered: 05/08/2006)
05/10/2006	●36	LETTER TO DISTRICT JUDGE/LETTER TO MAGISTRATE JUDGE by Ronald Lee Lewis requesting waiver of the administrative remedy exhaustion requirement. 2 pages, no copies. (JLB) (Entered: 05/10/2006)

06/19/2006	•37	LETTER TO CLERK'S OFFICE from Ronald L. Lewis regarding the status of his case. Sent a copy of the docket entries. No copy/1pg (VEM) (Entered: 06/19/2006)
07/03/2006	•38	LETTER TO CLERK'S OFFICE from Ronald L. Lewis regarding his case being transferred. No copy/1pg (VEM) (Entered: 07/11/2006)
07/14/2006	•39	LETTER TO DISTRICT JUDGE by Warden FMC Rochester dated 7/06/06. (JMH) (Entered: 07/17/2006)
07/18/2006	•40	LETTER TO DISTRICT JUDGE by Ronald Lee Lewis re: prison conditions; with attachments. 6pgs/no copy. (LPH) (Entered: 07/21/2006)
08/02/2006	•41	LETTER TO DISTRICT JUDGE by Ronald Lee Lewis received on 7/26/06, no response. 12pgs (VEM) (Entered: 08/02/2006)
08/04/2006	•42	ORDER re [35] MOTION for Reconsideration re <u>32</u> Order on Report and Recommendation, filed by Ronald Lee Lewis. Signed by Judge Ann D Montgomery on 8/4/2006. (GS) (Entered: 08/04/2006)
08/07/2006	•50	LETTER from Ronald L. Lewis to Judge Ann D. Montgomery regarding conditions of confinement. No copy/7pgs (VEM) (Entered: 08/09/2006)
08/08/2006	•43	LETTER TO DISTRICT JUDGE by Ronald Lee Lewis re: health conditions. 1pg no copy (jam) (Entered: 08/09/2006)
08/08/2006	•44	LETTER TO CLERK'S OFFICE from Ronald Lee Lewis re: filing motion. 1pg no copy (jam) (Entered: 08/09/2006)
08/08/2006	•45	MOTION to Reopen by Ronald Lee Lewis. 4pgs no copy (jam) (Entered: 08/09/2006)
08/08/2006	•46	LETTER TO DISTRICT JUDGE by Ronald Lee Lewis re: 2 attached Orders from the Northern District Court of Texas. 6pgs no copy (jam) (Entered: 08/09/2006)
08/08/2006	•47	LETTER TO DISTRICT JUDGE by Ronald Lee Lewis re: conditions of confinement. 4pgs no copy (jam) (Entered: 08/09/2006)
08/08/2006	•48	LETTER TO DISTRICT JUDGE by Ronald Lee Lewis re: health condition and attached letter about filed Tort Claim. 9pgs no copy (jam) (Entered: 08/09/2006)
08/08/2006	•49	LETTER TO DISTRICT JUDGE by Ronald Lee Lewis re: health conditions and attached second adendum to Tort Claim. 9pgs no copy (jam) (Entered: 08/09/2006)
08/14/2006	•51	ORDER denying [45] Motion to Reopen Case . Signed by Judge Ann D Montgomery on 8/14/2006. (GS) (Entered: 08/14/2006)
08/15/2006	•52	LETTER TO DISTRICT JUDGE by Ronald Lee Lewis dated 8/9/06. (VEM) Modified on 8/15/2006 (Moralez, Vickie). (Entered: 08/15/2006)